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January 22, 2018

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210

**RE: Newberry Solar I, LLC v. Duke Energy Carolinas, LLC
Docket No. 2017-351-E**

Dear Ms. Boyd:

Enclosed for filing in the above-referenced docket is Duke Energy Carolinas, LLC's Objection to Birdseye Renewable Energy, LLC's Petition to Intervene.

Should you have any questions regarding this matter, please do not hesitate to contact me at 803.988.7130.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rebecca Dulin", written in a cursive style.

Rebecca J. Dulin

cc: Service List

In Re:)	
)	
Newberry Solar I, LLC,)	
Complainant/Petitioner)	Duke Energy Carolinas, LLC’s
)	Objection to Birdseye Renewable
)	Energy, LLC’s Petition to Intervene
v.)	
)	
Duke Energy Carolinas, LLC,)	
Defendant/Respondent.)	
)	
)	
)	

Pursuant to 10 S.C. Code Ann. Regs. 103-825 and other applicable rules of practice and procedure of the Public Service Commission of South Carolina (“Commission”), Duke Energy Carolinas, LLC (“DEC” or the “Company”) hereby objects to Birdseye Renewable Energy, LLC’s (“Birdseye”) January 11, 2018 Petition requesting intervention in the above-captioned proceeding (the “Petition”). Because no case or controversy exists into which Birdseye may intervene, and because Birdseye’s interest in this proceeding involves an interconnection request over which the Commission does not have jurisdiction, the Petition should be denied.

BACKGROUND

On November 30, 2018, Newberry Solar I, LLC (“Newberry Solar”) initiated this proceeding by filing a complaint against DEC, alleging that the Company had assigned an incorrect queue position for Newberry Solar’s state-jurisdictional interconnection request. On January 5, 2018, the Standing Hearing Officer issued an order granting DEC’s request to hold the procedural deadlines in this docket in abeyance because Newberry Solar and DEC (the

“Parties”) had reached an agreement in principle that would allow the Newberry Solar to withdraw the Complaint. On January 11, 2018, counsel for Newberry Solar filed a letter in this docket informing the Commission that the Parties had entered into a settlement agreement and therefore the docket could be administratively closed.

Also on January 11, 2018, Birdseye filed the Petition requesting intervention in this Complaint proceeding. According to the Petition, the issues raised in this now-resolved Complaint proceeding will impact the status of Birdseye’s projects. As explained below, Birdseye’s Petition should be denied.

ARGUMENT

Birdseye’s Petition should be denied because no case or controversy exists between the Parties in this proceeding into which Birdseye may intervene. The South Carolina Administrative Procedures Act provides that “unless precluded by law, informal disposition may be made of a contested case by stipulation, agreed settlement, consent order, or default.”¹ Because the Parties have entered into a settlement agreement, notice of which was filed with the Commission, the issues presented in the Complaint have been disposed of, and no active case or controversy exists in this proceeding. In *Dep’t of Health & Envtl. Control v. Columbia Organic Chem. Co. (ex Parte Reichlyn)*, 310 S.C. 495, 427 S.E.2d 661 (1993), the South Carolina Supreme Court held that intervention is untimely when requested after a settlement agreement has been entered into as no “ongoing judicial action” exists.² Similarly, no ongoing judicial action is present in the instant case, and the Petition should be denied.

¹ See S.C. Code Ann. § 1-23-320(F).

² *Dep’t of Health & Envtl. Control v. Columbia Organic Chem. Co. (ex Parte Reichlyn)*, 310 S.C. 495, 500, 427 S.E.2d 661, 664 (1993) (internal quotations omitted).

Additionally, the Petition is improper because Birdseye's interest in this proceeding involves matters exclusive to the jurisdiction of the Federal Energy Regulatory Commission ("FERC"). Rather than submit to DEC a state-jurisdictional interconnection request pursuant to the South Carolina Generator Interconnection Procedures adopted by the Commission,³ Birdseye elected to submit a FERC-jurisdictional interconnection request under the Large Generator Interconnection Procedures pursuant to FERC Order No. 2003, *et seq.*⁴ Because Birdseye's interests are specific to an interconnection request over which the Commission does not have jurisdiction, the Petition should be denied.

CONCLUSION

WHEREFORE, for the reasons set forth herein, DEC requests that the Petition be denied.

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and



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³ *Order Adopting Interconnection Standard and Supplemental Provisions*, Order No. 2016-191, S.C. Public Service Commission Docket No. 2015-362-E (April 26, 2016).

⁴ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

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Columbia, South Carolina
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